

**United States Department of Labor
Employees' Compensation Appeals Board**

T.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-1745
Issued: February 5, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 7, 2017 appellant filed a timely appeal from an April 27, 2017 merit decision and a May 15, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish disability for the period December 1, 2016 to January 22, 2017 due to his accepted employment conditions; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided the Board includes evidence received after OWCP issued its May 15, 2017 decision. The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Therefore, the Board is precluded from viewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On December 2, 2016 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left wrist/hand tendinitis which he attributed to employment-related repetitive movement. He indicated that on November 29, 2016 he first became aware of his claimed condition and that it was caused or aggravated by factors of his federal employment. Appellant last worked on December 1, 2016 and has not returned.

In a December 2, 2016 report, Dr. Kenneth E. Mayeda, an attending Board-certified family practitioner, noted that appellant reported complaining of pain around his left thumb and left wrist for the prior two days. Appellant advised that he used his thumbs frequently in his job as a letter carrier as he had to sort mail. Dr. Mayeda detailed the findings of his December 2, 2016 examination, noting that there appeared to be swelling from the dorsum area of the left thumb (interphalangeal joint) to the radial aspect of the left wrist. There was mild tenderness near the distal radius of the left wrist and Finkelstein's test was difficult to perform as appellant had limited and painful range of motion of the left thumb. Dr. Mayeda diagnosed left wrist tendinitis (de Quervain's tendinitis) and noted, "Related to repetitive activity at work."

In a duty status report (Form CA-17) dated December 2, 2016, Dr. Mayeda listed the date of injury as November 30, 2016, the mechanism of injury as delivering mail, and the diagnosis due to injury as left wrist tendinitis. He indicated that appellant could resume work with restrictions of no simple grasping/fine manipulation. Dr. Mayeda advised that these work restrictions would be effective for three weeks.

In a report of accident dated December 2, 2016, Dr. Mayeda indicated that appellant complained of injury to his left thumb and wrist due to "repetitive motion of digits" required by his job. He noted examination findings and diagnosed left wrist tendinitis.

In a December 21, 2016 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported work incidents caused or aggravated a medical condition. It requested that appellant complete and return an attached development questionnaire which posed various questions regarding the work duties he believed caused his claimed employment injury. On December 21, 2016 OWCP also requested additional information from the employing establishment, including a copy of appellant's position description.

In an undated statement, received on January 10, 2017, appellant indicated that for eight hours per day over the course of more than 32 years his letter carrier job required him to hold a handful of letters in his left hand and flats in his left arm and to push each letter up with his left thumb to transfer it to his right hand and place it in the mail receptacle. He would then use his right hand to grab a flat out of his left arm and use his right thumb and hand to roll each flat in order to place it in the mail receptacle.

In a January 4, 2017 letter, a customer service manager at the employing establishment acknowledged that appellant's letter carrier job required him to repetitively grasp and manipulate letters and other thin objects, and to handle packages weighing up to 70 pounds for the majority of each workday. The manager noted that appellant had worked at his present worksite for one

and a half years where he cased mail for about two hours per day and then drove a vehicle to deliver mail. The employing establishment submitted a copy of appellant's position description.

Appellant submitted a December 29, 2016 report in which Dr. Bruce A. Bonsack, an attending Board-certified internist, indicated that he presented for follow-up of left wrist tendinitis and tenosynovitis of the thumbs, which had been ongoing for about six weeks.³ He reported that he was unable to move his thumbs, especially with fine manipulation, due to inflammation/discomfort. Dr. Bonsack reported examination findings, noting induration at the carpometacarpal and metacarpophalangeal joints of the left thumb and restricted range of motion of the left thumb. He diagnosed tenosynovitis/left wrist tendinitis and indicated that he would outline appellant's work limitations in another document. Dr. Bonsack indicated that the inflammatory changes noted on examination were consistent with a repetitive injury caused by appellant's letter carrier duties at the employing establishment.

In a December 29, 2016 letter, Dr. Bonsack indicated that, due to medical reasons, appellant should avoid fine manipulation involving his thumbs and should not lift, push, or pull more than 10 pounds for three weeks. He noted, "[Appellant] may do light duty with the above restrictions."⁴

On January 23, 2017 appellant returned to work for the employing establishment performing limited-duty work on a part-time basis. He received partial disability compensation on the daily roll between January 23 and April 28, 2017.⁵

On March 7, 2017 OWCP accepted appellant's claim for left hand tenosynovitis and left radial styloid tenosynovitis (de Quervain's tenosynovitis).

On March 16, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for the period December 1 through 9, 2016 due to his accepted employment conditions.⁶

In a December 8, 2015 report, Dr. Michael A. Kovar, an attending Board-certified family practitioner, indicated that his clinic had seen appellant on that date and noted that he was excused from work from December 8 to 10, 2015.

³ Appellant reported that he had worked at the employing establishment for more than 30 years and that repetitive use of his hands had caused arthritic changes in his thumbs that progressed from mild-to-moderate pain to severe discomfort over the past year.

⁴ Appellant also submitted the findings of December 14, 2016 x-ray testing of his left thumb which contained an impression of mild degenerative changes.

⁵ Appellant returned to full-time work without wage loss in late April 2017 and he did not receive any disability compensation after April 28, 2017.

⁶ The employing establishment verified (Form CA-7a) that appellant worked 9.44 hours on December 1, 2016, took a total of 16 hours of sick leave for December 2 to 3, 2016, and took an additional 32 hours of leave without pay (LWOP) for the period December 5 to 9, 2016. Appellant later filed additional CA-7 forms claiming temporary total disability for the period December 10, 2016 through January 22, 2017.

In a December 15, 2015 report, Dr. Thomas C. Erdmann, an attending Board-certified family practitioner, advised that his clinic had seen appellant on that date and noted that, due to an acute medical condition, he should not work from December 15 to 20, 2015.

In a January 18, 2017 report, Dr. Bonsack indicated that, due to medical reasons, appellant could return to work with reduced hours (four hours per day for two weeks) without any other restrictions.⁷

In a March 27, 2017 letter, OWCP advised appellant that the evidence of record did not establish that he had disability for the claimed period. It afforded him 30 days to submit additional evidence in support of his claim.

In a March 31, 2017 report, Dr. Bonsack indicated that, due to medical reasons, appellant could return to work on a reduced work schedule (six to eight hours per day) for six weeks.

OWCP subsequently received another copy of Dr. Mayeda's December 2, 2016 treatment notes.

In an April 27, 2017 decision, OWCP denied appellant's claim for disability for the period December 1, 2016 to January 22, 2017 due to his accepted employment conditions. It determined that he failed to submit medical evidence establishing the claimed period of disability. OWCP noted that the medical evidence of record showed that appellant could work with restrictions during the claimed period of disability.

On May 8, 2017 appellant requested reconsideration of OWCP's April 27, 2017 decision.

In a May 15, 2017 decision, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that appellant's reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁹ In general the term disability under FECA means

⁷ On February 2, 2017 Dr. Bonsack indicated that appellant should work four hours per day for two weeks and, on February 16, 2017, he noted that appellant should work four hours per day for three weeks.

⁸ *Supra* note 1.

⁹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.¹⁰ This meaning, for brevity, is expressed as disability for work.¹¹

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish total disability for the period December 1, 2016 to January 22, 2017 due to his accepted employment conditions.

In a December 8, 2015 report, Dr. Kovar indicated that appellant was evaluated at his clinic on that date and noted that he was excused from work from December 8 to 10, 2015. In a December 15, 2015 report, Dr. Erdmann advised that appellant had been seen in his clinic on that date and noted that, due to an acute medical condition, he should not work from December 15 to 20, 2015. These reports are of limited probative value regarding appellant's claim of work-related disability from December 1, 2016 to January 22, 2017, as both reports predate the claimed period of disability by one year. Moreover, neither Dr. Kovar nor Dr. Erdmann provided an opinion on the cause of appellant's disability. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition/disability is of no probative value on the issue of causal relationship.¹³

In a December 2, 2016 report, Dr. Mayeda diagnosed left wrist tendinitis (de Quervain's tendinitis) and noted, "Related to repetitive activity at work." In a duty status report dated December 2, 2016, he listed the date of injury as November 30, 2016, the mechanism of injury as delivering mail, and the diagnosis due to injury as left wrist tendonitis. Dr. Mayeda indicated that appellant could resume work with restrictions of no simple grasping/fine manipulation. He advised that these work restrictions would be effective for three weeks.¹⁴

The Board finds that the submission of these reports are insufficient to establish appellant's claim for work-related disability for the period December 1, 2016 to January 22, 2017 because Dr. Mayeda did not provide a rationalized medical opinion establishing that he had work-related disability for this period. The Board has held that a report is of limited probative

¹⁰ See 20 C.F.R. § 10.5(f).

¹¹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); see also *A.M.*, Docket No. 09-1895 (issued April 23, 2010).

¹² See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹³ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁴ In a report of accident dated December 2, 2016, Dr. Mayeda noted examination findings and diagnosed left wrist tendinitis. However, he did not provide any opinion on disability in this report.

value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁵ Dr. Mayeda did not explain how appellant's work-related condition could have caused disability from December 1, 2016 to January 22, 2017 or otherwise describe, in medical terms, why appellant would have been disabled from work during this period.

Appellant submitted a December 29, 2016 report in which Dr. Bonsack reported examination findings and diagnosed tenosynovitis/left wrist tendinitis. In a December 29, 2016 letter, Dr. Bonsack indicated that, due to medical reasons, appellant should avoid fine manipulation involving his thumbs and should not lift, push, or pull more than 10 pounds for three weeks. He noted, "He may do light duty with the above restrictions." In a January 18, 2017 report, Dr. Bonsack indicated that, due to medical reasons, appellant could return to work with reduced hours (four hours per day for two weeks) without any other restrictions. The Board finds that these reports are of limited probative value on the relevant issue of the present case because Dr. Bonsack did not provide a rationalized medical opinion that appellant had disability from December 1, 2016 to January 22, 2017 due to his accepted work conditions.¹⁶ Dr. Bonsack did not describe appellant's work-related conditions in any detail or explain the medical process through which they could have caused disability during this period.¹⁷

As appellant has not submitted rationalized medical evidence establishing disability for the period December 1, 2016 to January 22, 2017, causally related to his accepted employment conditions, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁸ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁹ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which

¹⁵ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relationship between work factors and a diagnosed condition/disability).

¹⁶ *Id.*

¹⁷ Appellant submitted other reports in which Dr. Bonsack discussed disability for periods other than the period December 1, 2016 to January 22, 2017, but these reports would not be relevant to the main issue of the present case.

¹⁸ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

¹⁹ 20 C.F.R. § 10.607.

review is sought.²⁰ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.²¹ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²²

ANALYSIS -- ISSUE 2

OWCP issued a decision on April 27, 2017, and by appeal request form, appellant timely requested reconsideration of that decision on May 8, 2017. However, appellant did not present any additional evidence or argument with his request.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), thereby necessitating a reopening of the case for review of the merits of the claim. In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. The underlying issue in this case was whether the evidence established appellant's claimed total disability for the period December 1, 2016 to January 22, 2017, due to his accepted left wrist/hand conditions. That is a medical issue which must be addressed by relevant medical evidence.²³ A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but the Board finds that appellant did not submit any such evidence in this case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability for the period December 10, 2016 to January 22, 2017 due to his accepted employment conditions. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

²⁰ *Id.* § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²¹ 20 C.F.R. § 10.606(b)(3).

²² *Id.* at § 10.608(a), (b).

²³ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 15 and April 27, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 5, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board